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Attorneys for Defendant
THE VONS COMPANIES, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHRIS KOHLER, Plaintiff, vs. THE VONS COMPANIES, INC., dba VONS #2360, Defendant.	Case No.: ’08 CV 0082 IEG (RBB) **ANSWER OF THE VONS COMPANIES, INC. TO COMPLAINT**

Defendant The Vons Companies, Inc. (“Vons”) (incorrectly identified by Plaintiff as “The Vons Companies, Inc. dba Vons #2360”), for itself and no other defendants, responds to the complaint of Chris Kohler (“Plaintiff”) as follows:

1. Vons denies each and every allegation of this paragraph.

2. Vons denies each and every allegation of this paragraph, and Vons also denies that Plaintiff is entitled to any of the relief sought.

3. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

4. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

5. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

6. Vons admits that the Vons store and the parking lot and common areas identified in Plaintiff’s complaint are located at 845 College Boulevard in Oceanside, California, and that this is within the Southern District of California. Except as so admitted, the allegations of this paragraph are legal contentions that do not require admission or denial.

7. Vons admits that it is a Michigan corporation and that Vons operates the Vons store at 845 College Boulevard in Oceanside, California identified in Plaintiff’s complaint. Except as so admitted, Vons denies each and every allegation of this paragraph.

8. Vons is without knowledge or information sufficient to form a belief as to the allegations of this paragraph, and on that basis Vons denies each and every allegation of this paragraph.

9. Vons admits that it is the operator of the Vons store at 845 College Boulevard in Oceanside, California. Except as so admitted, the allegations of this paragraph are legal contentions that do not require admission or denial.

10. Vons denies each and every allegation of this paragraph.

11. Vons denies each and every allegation of this paragraph.

12. Vons denies each and every allegation of this paragraph.

13. Vons denies each and every allegation of this paragraph.

14. Vons denies each and every allegation of this paragraph.

15. Vons denies each and every allegation of this paragraph.

16. Vons incorporates herein its responses to paragraphs 1-15.

17. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

18. Vons denies each and every allegation of this paragraph.

19. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

20. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

21. Vons denies each and every allegation of this paragraph.

22. Vons denies each and every allegation of this paragraph.

23. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

24. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

25. Vons denies each and every allegation of this paragraph.

26. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

27. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

28. Vons denies each and every allegation of this paragraph.

29. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

30. Vons denies each and every allegation of this paragraph.

31. Vons denies each and every allegation of this paragraph, and Vons also denies that Plaintiff is entitled to any of the relief sought.

32. Vons denies each and every allegation of this paragraph, and Vons also denies that Plaintiff is entitled to any of the relief sought.

33. Vons incorporates herein its responses to paragraphs 1-32.

34. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

35. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

36. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

37. Vons denies each and every allegation of this paragraph.

38. Vons denies each and every allegation of this paragraph, and Vons also denies that Plaintiff is entitled to any of the relief sought.

39. Vons denies each and every allegation of this paragraph, and Vons also denies that Plaintiff is entitled to any of the relief sought.

40. Vons incorporates herein its responses to paragraphs 1-39.

41. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

42. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

43. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

44. Vons denies each and every allegation of this paragraph.

45. Vons denies each and every allegation of this paragraph.

46. Vons denies each and every allegation of this paragraph, and Vons also denies that Plaintiff is entitled to any of the relief sought.

47. Vons denies each and every allegation of this paragraph, and Vons also denies that Plaintiff is entitled to any of the relief sought.

48. Vons incorporates herein its responses to paragraphs 1-47.

49. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

50. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

51. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

52. Vons denies each and every allegation of this paragraph, and Vons also denies that Plaintiff is entitled to any of the relief sought.

AFFIRMATIVE DEFENSES

Vons currently has insufficient information available as to whether Vons has additional, as yet unstated, affirmative defenses beyond those stated hereinbelow. Vons reserves the right to assert additional affirmative defenses in the event that investigation or discovery indicates that such defenses would be appropriate.

FIRST AFFIRMATIVE DEFENSE

The complaint, and each and every purported cause of action therein, fail to state facts sufficient to constitute a cause of action against Vons.

SECOND AFFIRMATIVE DEFENSE

Vons is informed and believes, and on that basis alleges, that Plaintiff's claims are barred, in whole or in part, by applicable statutes of limitation, including but not limited to California Code of Civil Procedure sections 337, 338, 339, 340, and 343.

THIRD AFFIRMATIVE DEFENSE

Without admitting the allegations of the complaint, Vons alleges that any and all architectural barriers at this Vons store and the parking and common areas on the same parcel have been removed, and that goods, services, facilities, privileges, advantages and/or accommodations are provided on an equal and unrestricted basis.

FOURTH AFFIRMATIVE DEFENSE

If Plaintiff suffered any loss or damage, such loss or damage was proximately caused in whole or in part by Plaintiff's own failure to mitigate any alleged damages. Therefore, Plaintiff's claims must be reduced, diminished or defeated by such amounts as should have been mitigated.

FIFTH AFFIRMATIVE DEFENSE

The alleged conduct of Vons was excused, justified and/or privileged.

SIXTH AFFIRMATIVE DEFENSE

The damages allegedly suffered by Plaintiff, if any, are the direct and proximate result of the acts or omissions of other persons, and not of Vons.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to exercise ordinary care, caution or prudence to avoid the injuries and damages alleged, if any. Therefore, any resulting damages to Plaintiff were proximately caused by Plaintiff's own conduct, and any recovery by Plaintiff must be reduced or barred entirely by the proportion of damages caused by Plaintiff's own conduct.

EIGHTH AFFIRMATIVE DEFENSE

Vons did not authorize, ratify, acquiesce in or have knowledge of any action by other persons constituting discrimination as alleged by Plaintiff.

NINTH AFFIRMATIVE DEFENSE

Vons is informed and believes, and on that basis alleges, that Plaintiff's claims are barred by the doctrine of unclean hands.

TENTH AFFIRMATIVE DEFENSE

Vons is informed and believes, and on that basis alleges, that Plaintiff's claims are barred by the doctrine of laches.

ELEVENTH AFFIRMATIVE DEFENSE

Vons is informed and believes, and on that basis alleges, that Plaintiff's claims are barred by the doctrine of waiver.

TWELFTH AFFIRMATIVE DEFENSE

Vons is informed and believes, and on that basis alleges, that Plaintiff's claims are barred by the doctrine of estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged injuries, if any, took place upon and were caused by facilities and programs not under the control or ownership of Vons, but under the control or ownership of other persons.

FOURTEENTH AFFIRMATIVE DEFENSE

Vons has taken all steps readily achievable to comply with the ADA and with state laws of comparable effect to remove any barriers to access, to make the subject facilities, programs and services accessible, or to provide reasonable and satisfactory alternatives.

FIFTEENTH AFFIRMATIVE DEFENSE

Vons is informed and believes, and on that basis alleges, that Plaintiff lacks standing to sue Vons on one or more of the claims for relief alleged in the complaint.

PRAYER FOR RELIEF

WHEREFORE, Vons prays for judgment against Plaintiff as follows:

1. That Plaintiff takes nothing whatsoever by way of the complaint;

2. For an award of costs and attorneys' fees to the fullest extent allowed by applicable law; and

3. For such other and further relief as the Court deems just and proper.

Dated: February 11, 2007 MAZZARELLA ■ CALDARELLI LLP

By: /s/ Michael D. Fabiano
MICHAEL D. FABIANO
Attorneys for Defendant
THE VONS COMPANIES, INC.